

1. GGPR's Legal Authorities Are Merely Cited As Principles of General Application and Do Not Support Taking Any Action Against SFUSD. None of the cases cited by GGPR are relevant to its allegations against SFUSD. The five cases cited in the Analysis section of the GGPR's pleading (pp. 16 - 17), are cited only to stand for broad general principles regarding the Commission's undisputed jurisdiction to deny license renewals in appropriate cases. While no one would disagree that those cases, as precedent, stand for what is ascribed to them, GGPR has failed to relate the holdings or rationale of these venerable case authorities (dating from 1946 through 1980) to any reason why SFUSD's license should be in jeopardy.

Thus, while no one would disagree that willful misconduct, lack of candor, and refusal to comply with the Commission's rules would raise issues going to a licensee's fitness for license renewal, no cogent legal argument or factual allegations serve to tie these standards to any conduct of which SFUSD has been accused. Since GGPR did not raise any substantial and material questions with respect to its allegations that SFUSD and KALW "violated EEO program rules", "failed to comply" with its public inspection file obligations, or displayed "lack of candor" with respect to either matter in its application for license renewal, the cases cited to indicate the Commission's authority to deny renewal in appropriate instances of violation are not relevant.

2. The Affidavits, Statements, and Other Exhibits Attached to GGPR's Pleading Constitute Unsupported Hearsay or Are Otherwise Inadmissible and Irrelevant.

Although it may seem like a somewhat tedious exercise, it is significant and highly revealing to review the various affidavits, statements, and other exhibits attached to

GGPR's pleading. As will be seen, the great majority of these documents constitute no more than unsupported hearsay in that they lack sworn or attested support as being true and correct to the best of any individual's personal knowledge. Furthermore, most of the documents are irrelevant to any substantial or material question of fact. Many exhibits only go to the private civil service dispute that GGPR has improperly attempted to bring to the Commission for resolution. Yet others are irrelevant because the "evidence" they seek to proffer is not material to any issue, but offers merely a nongermane subjective perspective is not probative of the general charge that GGPR hopes to make. Finally, many of GGPR's "factual" allegations against SFUSD or KALW are contained in the text of its pleading. Since GGPR failed to provide a verification or an affidavit or declaration of someone with personal knowledge to support the allegations contained in the pleading, these allegations may not be considered and it fails to meet the standard required by section 309.

Exhibits B (Affidavit of Michael Johnson), H (Statement of Joann Mar), and I (Statement of Joseph Hughes) are typical example. Each contains statements that the affiant did or did not see a particular thing (*e.g.*, a posted EEO notice) in a particular place or that the affiant was not personally informed of a particular thing (*e.g.*, an employment opportunity). These statements -- made from a narrow and entirely subjective perspective -- are nevertheless proffered to prove far broader and more general allegations -- such as, that such documents did not exist or were not posted anywhere or that no minority group members were notified or encouraged to apply for any positions of greater responsibility. It is elementary logic that you cannot prove the

general by means of the particular. Furthermore, GGPR's subjective allegations are completely refuted by the declarations of Mr. Ramirez and Mr. Palacios. Furthermore, GGPR uses its affidavits to try to prove a general proposition regarding civil service matters that are not material to either SFUSD's EEO program or the broader issue of its fitness as a licensee but, rather, a private dispute between a few disgruntled employees and their employer. Finally, these exhibits are replete with hearsay-within-hearsay, particularly Mar's statement (Exh. H), and Johnson's claim that Mr. Ramirez "told" him something (which Mr. Ramirez, in fact, denies in his own declaration, at ¶ 8).

Similarly, Exhibit C (Evans Affidavit) contains a general and conclusory hearsay account of an alleged conversation between the affiant and Mr. Ramirez. To the extent it contains any specific allegation, Mr. Ramirez (the other alleged party to the conversation) denies it was said (Ramirez Exhibit, ¶ 8). GGPR repeatedly cites two of Mr. Evans' conclusory statements as support for nearly all its charges. But to say that the public file is a "mess" does not tell us what he claims was or was not in the files on any particular date, particularly one year later when the application was filed.. Similarly, to claim that an EEO program is "out of date" is not a valid assessment or description of SFUSD's EEO program.⁸ Even more significantly, neither of these allegations tells us anything about what Mr. Ramirez knew or did not know at the time he performed his delegated duty to fill in the blanks on the renewal application form and transmit it to the licensee for signature and certification. Mr. Evans' statement is not only rank hearsay, it

⁸ A comment to that effect could just as easily be interpreted as criticism of SFUSD long-term and continuing commitment to affirmative action, which is no longer a popular subject in post-Proposition 209 California.

is neither material or relevant to any of these issues. It is not probative of the contents of the file, the adequacy of SFUSD's EEO program, or the Mr. Ramirez' mental state one year later. As a proffer of evidence, the Evans' affidavit is valueless. Ms. Hecht's affidavit (Exhibit D) suffers from much the same evidentiary flaws. She characterizes the files as "disorganized and incomplete", but it is unclear on what she based her evaluation. With no disrespect to Ms. Hecht, it must be recognized that she is a volunteer part-time clerk who necessarily based her assessment on her own understanding of what should be in the files and what she perceived as being there or not. Mr. Ramirez attests that he did not consider her evaluation reliable and did not use it, but relied instead on the advice of communications counsel, the NAB counsel memo on required public file contents, and his own evaluation (Ramirez Declaration, ¶¶ 10-12). Exhibit E is merely hearsay which bears no date or other identifying mark and has not been attested to as true and correct by Ms. Hecht or anyone else.

Exhibit F (statement of Mel Baker) is almost entirely hearsay -- he details what he was allegedly "told" by two other persons. Furthermore, both those conversations are irrelevant and immaterial to any question under section 309 because they relate to the private civil service dispute. This exhibit, like Exhibits H, I, Y (statement of Jason Lopez) and CC (statement of Hedy Jacobowitz), is neither an affidavit nor a declaration in compliance with the rules, as pointed out in footnote 3 above. As such, they are

merely hearsay statements without any inherent reliability, and any allegations they contain should be disregarded.⁹

Exhibits G, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Z, AA, and BB are documents that have not been attested to by affidavit or declaration of someone with personal knowledge as being true and correct.¹⁰ For this reason, each of these documents cannot be considered in determining whether any substantive or material question has been raised, but must be dismissed and disregarded. They are no more than hearsay and are inadmissible. Furthermore, the majority of these documents (Exhibits L, M, N, P, Q, S, T, U, V, W, X, Z, and AA) are irrelevant to any material question of fact in that GGPR cites them in support of matters relating to the private civil service dispute. Finally, as discussed above, a number of these documents may not have been legally acquired (e.g., K, M, N, S, W, and AA). To the extent that GGPR has proffered any of the aforementioned exhibits as "evidence" of any alleged misfeasance by SFUSD or the station, SFUSD submits that such documents are not admissible.

⁹ The Jacobowitz statement (Exhibit CC) is simply devoid of any material allegation. All Ms. Jacobowitz says is that "an attorney" on "two occasions" (it is unclear if this means one attorney and two interviews or two attorneys and two separate interviews and we are not told who he, she or they represented) interviewed her. She says the attorney or attorneys was "investigating sexual harassment allegations" about a former station manager. This statement is clearly hearsay, as is her characterization of what "they" asked her. She does not even tell us her response to these questions or whether this was an internal or external "investigation" or whether the allegations against Mr. Jacob had any merit or were ever prosecuted. Statements like this demonstrate the very dangers that make hearsay testimony inadmissible as evidence. It should be stricken and disregarded.

¹⁰ Mel Baker, in Exhibit F (which is neither an affidavit nor a declaration), claims that the "listings in Exhibit R are true and correct", but does not attest to whether he so claims on the basis of his personal knowledge. In fact, he admits that this compilation was actually "based on" another document. He does not tell us whether he or another person created this document and does not supply a copy of the other document upon which it is "based." Exhibit R is inadmissible not only as unreliable hearsay but also as a violation of the Best Evidence Rule. Unsupported, unsubstantiated charts created by anonymous individuals and not certified as true by anyone with personal knowledge cannot be used as "evidence" to raise a question of fact under section 309 of the Act or the Commission's rules.

B. GGPR's "Petition" Fails to Raise Any Material Questions Regarding Either SFUSD's EEO Program or Its Candor in Reporting Thereon.

KALW participates in and is integrated into the system-wide Equal Employment Opportunity program of its licensee, SFUSD, a public institution with more than 6,000 employees. Mr. Ramirez had responsibility as general manager for KALW's compliance with the overall SFUSD EEO Program. He had also been delegated responsibility to provide the data on KALW's renewal application. Mr. Ramirez told the complete truth when he responded as he did on the Commission's Broadcast EEO Program Report. The affirmative responses regarding the posting of EEO notices and publication of such notices on communications with employees were true because SFUSD has posted and routinely publishes such notices as these questions indicated. The notices are, in fact, posted at SFUSD's Human Resources Department and at the Office of the government of the City and County of San Francisco, which is where all employment-related matters are handled by SFUSD, the licensee, including KALW employment. Likewise, as Exhibits 5, 6, and 7 of the Palacios Declaration demonstrate, SFUSD publishes prominent EEO notices on its job opening announcements and its correspondence with prospective employees. Mr. Ramirez, who knew the details of SFUSD EEO Program and its implementation, answered with complete truth based upon his knowledge of these facts. (Palacios Declaration, *passim*; Ramirez Declaration, ¶¶ 1, 13, 14).

1. GGPR's Allegations Are Based Upon Semantics and the Subjective Perspective of Witnesses and Are Therefore Irrelevant to any Valid Claim Under §309.

The "evidence" that GGPR has proffered for its claims that KALW/SFUSD violated these standards and then showed a lack of candor on its renewal application must fail.

As SFUSD demonstrated in section IV. A. 2 above, GGPR's relies primarily upon statements that are worded as follows: "I have not seen at KALW notices posted which state . . ." "I did not see notices posted at KALW for openings . . ." (Exhibit B, Affidavit of Michael Johnson); "I told Mr. Ramirez . . . that the EEO program was out of date" (Exhibit C, Affidavit of Dave Evans); "I did not see a notice informing KALW employees that KALW is an equal opportunity employer" "I was not . . . encouraged to apply for positions of greater responsibility" (Exhibit H, Statement of Joann Mar); "I have not seen . . . a notice which informs KALW employees" (Exhibit I, Statement of Joseph Hughes) (emphasis added).

It defies logic to conclude just because an individual employee did notice a notice posted at one particular location or claims he was not personally invited to apply for a particular job, that no such notice was posted anywhere or that no minority group members were informed of particular jobs or encouraged to apply. The illogical solipsism of GGPR's witnesses can hardly form the basis for a complaint of EEO program violation. The ultimate fallacy of GGPR's claims is underscored by the simple explanation, provided by Mr. Palacios (who serves as liaison between the station employees and the licensee) and Mr. Ramirez, that all such notices are posted at -- (surprise!) the Human Resources offices of the employer, SFUSD, and of the government offices of the City and County of San Francisco (Palacios Declaration, ¶ 4; Ramirez Declaration, ¶ 14).

SFUSD wonders whether one should primarily fault GGPR's semantics, its lack of logic, or its good faith. As the Commission is well aware, while section 73.2080 of the

Commission's rules requires its licensees to "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice", 47 C.F.R. § 73.2080 (b), no licensee is required to adopt any one particular FCC-endorsed EEO program. The specific rule provisions which GGPR claims were "violated" by SFUSD are all actually permissive examples of ways in which a licensee may choose to meet its EEO program obligations. That is, while having and implementing an EEO program is mandatory, the means a licensee may choose to implement its policy are permissive suggestions.

Moreover, all these Commission guidelines are, in fact incorporated into SFUSD's program, as is established by Mr. Palacios' declaration and its attached exhibits, including examples of official SFUSD employment-related documents and job posting that bear the precise notice that GGPR's "witnesses" claim they have never seen. GGPR's good faith, in fact, becomes suspect when, in addition to these numerous examples of its careful semantics when writing affidavits and careless reading of the rules, one considers the case of Exhibit K.

On page 8 of its pleading, GGPR makes the claim that

[p]rospective employees for this position [Station Manager] received a confirmation letter from Enrique Palacios . . . However, the confirmation letter did not contain a notice of KALW's EEO policy statement.

Exhibit K is then cited. GGPR makes this allegation to support its claim that, contrary to its certification of Question II.3 of the Broadcast EEO Program Report, "KALW" does not provide an EEO notice to prospective employees. GGPR's claim is false and its Exhibit K was not only illicitly-obtained but is an obvious fraud. As Mr. Palacios'

declaration attests, Exhibit K is only the **draft** of the form letter that was actually sent out to applicants. The form letter on SFUSD letterhead that was signed and mailed, a copy of which is provided as Exhibit 7 to his declaration, quite specifically does contain an EEO notice. Mr. Palacios further notes that Exhibit K could only have come into the possession of GGPR if it had been downloaded from the computer of his assistant or taken it from an SFUSD file. (Palacios Declaration, ¶¶ 4 - 8). On its face, Exhibit K is clearly a draft. GGPR's use of this document is not only fraudulent, but foolishly and recklessly fraudulent. Does GGPR expect the Commission to believe that SFUSD sends letters to applicants that are not on official letterhead? Or that Mr. Palacios or Mr. Ramirez, both members of minority groups, would scorn and disregard EEO guidelines?

GGPR's other EEO Program attacks are of a similar nature. All employees who work at the station are SFUSD, not KALW, employees. GGPR should know this because civil service rules would not apply to their jobs if KALW were simply owned by a private not-for-profit rather than a government entity. GGPR's accusation of failure to post EEO notices is refuted because the notices were posted -- where they belonged, at the Human Resources Department.

Similarly, contrary to GGPR's claims (pp. 8 - 10 of its pleading), SFUSD most certainly does disseminate its EEO program to applicants and employees, as the exhibits attached to Mr. Palacios' declaration demonstrate. Additionally, GGPR tries again unsuccessfully to prove the general from the particular with its allegations about SFUSD

job advertisements.¹¹ Merely because Joann Mar or Michael Johnson did not see a notice for a particular job does not and, logically, could not mean, as GGPR claims, that "[t]here was no evidence that advertising had been placed for the position." (GGPR pleading, at 11, emphasis added).

Another example of the willful tunnel vision of GGPR and its witnesses is demonstrated in its treatment of the entire question of SFUSD's cooperation with a union with respect to implementation of its EEO program. GGPR confuses the implementation of an EEO program (which is what the Commission requires and the Report form asks about) with implementation of the arcane minutiae of a civil service system (which is the Commission does NOT require of its licensees). For pages and pages, GGPR rants about the way in which KALW employees were chosen outside the "list", whether an exam was given, or whether a consultant was used. None of GGPR's labor/management complaints (or its strange allusion to the Internal Revenue Code at p. 12) is relevant or material to the question of whether SFUSD, as the employer, has "established, maintained, and carried out" an EEO program that satisfies the Commission's guidelines. SFUSD most certainly does satisfy these guidelines. GGPR has failed to adduce any relevant, germane, or material evidence to the contrary.

¹¹ GGPR is wrong here regarding both the requirements of the EEO Program Report form and the facts. It is certainly true that the Report form inquires about the media in which job advertisements were placed during the previous 12 months, but it only asks for examples of such media, not an exhaustive list of all such advertisements. It is immaterial whether the Education Week advertisement was published more than 12 months before the renewal application because, SFUSD points out, Mr. Ramirez never mentioned that ad or that publication in his response on the form. Rather, his response to Question III to provide an example of recruitment cites the Current, a newspaper about public broadcasting. The Commission can take official notice of this newspaper, which is a well-known trade publication in public broadcasting circles and contains extensive job advertisements. GGPR's charges are false and misleading and it appears that its Exhibit J is probably a cut-and-paste which lacks any authentication and conveniently omits any general EEO notice that the publication might provide.

No substantive or material questions of fact exist, therefore, with respect to the compliance of SFUSD's EEO Program with Commission guidelines. Perhaps the strongest proof of the validity of that program lies in its success. As Mr. Ramirez attest, more than fifty percent of KALW's full time employee staff, including staff members in the upper four job categories, are members of a minority group, as is at least one-half of its governing board (the Board of Education) (this is not just fifty percent parity, but fifty percent of all such employees). KALW recently received national recognition of its efforts to promote diversity and equal opportunity to members of all minority groups when it received notice from the Corporation for Public Broadcasting of its eligibility for special additional Community Service Grants and NAPPG funds because of its high percentage of minority employee and board members, in which a wide diversity of minority groups is represented. KALW is, in fact, one of the few public radio stations in the U.S., other than stations specifically created to serve a minority community, to have become eligible for such grant funds (Ramirez Declaration, ¶ 15).

As Mr. Ramirez also attests, when he exercised the responsibility delegated to him by the licensee, he responded affirmatively to the questions in the Broadcast EEO Program Report and did so on the basis of his awareness and understanding of the overall SFUSD EEO Program and the way in which it had been implemented system-wide (Ramirez Declaration, ¶ 14). GGPR cannot support its claim that Mr. Ramirez "was aware that KALW failed to practice" EEO hiring. Quite the opposite; Mr. Ramirez knew that KALW, through its licensee SFUSD, quite definitely and successfully did disseminate and practice EEO policies and responded truthfully to the questions on the

basis of that knowledge. Because these responses were, in fact, true and correct, and the licensee's representative was so informed, GGPR's allegations of lack of candor on the part of either Mr. Ramirez or the licensee must also fail. GGPR has raised no substantive or material question of fact regarding either SFUSD's EEO program or its candor.

C. GGPR's "Petition" Fails to Raise Any Material Questions Regarding Either KALW's Public Inspection File or the Licensee's Candor in Reporting Thereon.

The entire underpinning for GGPR's allegations that KALW failed to maintain its public inspection file and that Mr. Ramirez reported falsely in response to certain questions in Section III of the renewal application is likewise based upon conclusory and irrelevant allegations. Mr. Ramirez (in his Declaration) and SFUSD (through the Declarations of Mr. Ramirez and Mr. Palacios) denies those allegations. The truth regarding GGPR's charges here, as with its EEO charges, is quite other than GGPR would have the Commission believe.

I. Mr. Ramirez Responded Honestly to the Questions to the Best of His Understanding, Knowledge, and Belief. GGPR primarily bases its claim that Mr. Ramirez "knew" his answers to these questions were untrue upon the narrowly-worded and conclusory affidavits of Dave Evans and Susan Hecht (Exhibits C and D). GGPR seeks to make the case that, if Susan Hecht said she did not see something in the inspection file, that should necessarily mean it was never filed with the Commission. Ms. Hecht is not omniscient. Mr. Ramirez, who is not obligated to have believed her, relied instead upon advice of counsel and the NAB memo. (Ramirez Declaration, ¶¶ 9 - 12).

Question III, 1(b). This question asks whether the station's Ownership Report had been filed with the Commission? Mr. Ramirez responded "yes", because he understood the question to refer to the current report being filed with the Commission. GGPR bases its claims of noncompliance and lack of candor on its own mistaken understanding of this question. But question 1(b) does not ask about the public inspection files, but only about filing the current report with the Commission. Therefore, Mr. Ramirez' response was truthful and GGPR's argument (in Sections A and B of its pleading) is misplaced. Furthermore, Exhibit R, upon which GGPR wishes to rely for this claim, is unsupported, inherently unreliable and inadmissible, as is explained above in footnote 9.

Question 2 (Issue/Program Reports). GGPR alleges that KALW's public inspection file was deficient with respect to Issue/Program Reports. It bases this claim on the affidavits of Evans and Hecht, the statement of Lopez, and one unsupported hearsay document. Mr. Ramirez has set forth in his Declaration (¶¶ 9 - 13) his recollection of what Mr. Evans did and did not tell him and his lack of confidence in Ms. Hecht's judgment regarding the file's contents. Neither Evans' nor Hecht's affidavits indicate that they told Mr. Ramirez any specific information about what was in the files at the time he prepared the renewal application. Their conclusory statements cannot be taken as evidence of what was or was not in the file or of Mr. Ramirez' state of mind. As he attests, Mr. Ramirez relied upon KALW's communications counsel, his own evaluation of the public inspection file's contents, and the NAB memo when he responded to these questions (Ramirez Declaration, ¶¶ 9 - 12). Just because Evans and

Hecht claim that they told Ramirez something, that does not mean that they actually did so or, if they did, that he believed them. This is one of the major flaws in GGPR's argument, for it again tries to extrapolate from the particular to the general.

As Mr. Ramirez also attests (Declaration, ¶ 12), he believed that he had "fully accounted for all public issues/programs during [his] tenure as General Manager", which is what he understood the rule to call for, when he checked "yes" to the certification. The narrow, subjective, and conclusory claims of Evans and Hecht are irrelevant to Mr. Ramirez' state of mind or to the actual contents of the public inspection file at the time he responded to these questions.

With respect to GGPR's allegations that KALW failed to file donor lists (for which GGPR cites Exhibit G, KALW's Annual Financial Reports to CPB), SFUSD points out that the only donor lists which must be filed in accordance with Rule 73.3527(8), are "donors supporting specific programs." GGPR knows this limitation, for it quotes that precise language (GGPR pleading, p. 5). Yet, GGPR uses Exhibit G to try to bolster its claims that KALW had some obligation to file this type of donor list, failed to do so, and then lied about it. GGPR's so-called "evidence" contains no indication whatsoever that KALW actually had any donors whose donations were earmarked for specific programs. Exhibit G is, therefore, irrelevant and useless to support GGPR's allegation. GGPR makes no effort to adduce any evidence that (a) such program-specific donors existed; (b) appropriate lists of such donors, assuming arguendo they existed, were not filed; and (c) Jeffrey Ramirez knew these first two points and deliberately lied about it. No evidentiary basis supports these allegations.

GGPR has failed to raise any substantive or material question with respect to either SFUSD's compliance with the rules or its candor. The standards set forth in subsection 309(k) of the Act require far more than unsubstantiated, irrelevant, hearsay allegations such as these before a licensee can be denied renewal of its license. Under these standards, SFUSD is entitled to the unconditional renewal of its license.

V. ATTEMPTED VIOLATION OF THE COMMISSION'S RULES AND POLICIES REGARDING SETTLEMENTS.

On a number of occasions, the Commission has considered the need to strike a balance between protecting licensees from unreasonable demands and threats from those who might misuse the petition to deny process and avoiding any chilling effect upon the rights of legitimate community and other public-spirited groups to challenge license renewals from public interest motives. See, e.g., *Agreements Between Broadcast Licensees and the Public*, 57 F.C.C. 2d 42 (1975) (Rulemaking Opinion, by the Commission); *Petition for Rule Making to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, 99 (1980); *In the Matter of Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911 (1990) (Report and Order); *Patrick Henry*, 69 F.C.C. 2d 1305, 1309 - 11 (1978). The Commission's ultimate policy determination for striking that balance is embodied in the present language of Rule 73.3589, 47 C.F.R. §73.3589, which provides in subsection (a) that "[n]o person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny or an informal objection." Would-be petitioners can recover only their "legitimate and prudent expenses", but the licensee must certify to the

Commission that no money or any other consideration was provided. "Other consideration" is defined as "financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient." The Commission's concerns in enacting this Rule related both preventing abuse of its processes and to ensuring that licensees would retain control of and accountability for their stations.

GGPR, however, sought precisely this type of consideration from SFUSD as a condition of refraining from filing this Petition to Deny. The benefit it sought would have violated the provisions of this section of the rules. As Mr. Sanchez' Declaration attests, he received by fax on October 1, 1997, a letter from GGPR's counsel which conveyed GGPR's demand that SFUSD transfer control over the operation and management of KALW to GGPR. The letter warned that unless SFUSD had commenced negotiations toward this ultimate goal with GGPR within ten days, GGPR would begin preparations for filing a petition to deny against its license renewal.

SFUSD refused to comply with these demands and, by the end of the month, GGPR's pleading had been filed. This conduct, SFUSD submits, is precisely the type of abuse of process the Commission has condemned and about which it has stated it "would not hesitate to take appropriate and immediate action." *Standing Rule Making, id.*, 82 F.C.C. 2d at 103.

SFUSD believes that, inasmuch as GGPR and its members are outside the Commission's jurisdiction, the most appropriate action to be taken would be the immediate dismissal of GGPR's pleading and refusal to consider it as either a petition to

deny or an informal objection. Parties that seek to abuse and misuse the Commission's processes "for reasons primarily unrelated to the merits of a licensee's application" should not be accorded a hearing or permitted access to the "petitioning process." *Id.*

VI. CONCLUSION.

For all the above-stated reasons, the pleading filed by GGPR as a petition to deny should be dismissed and its claims against KALW and its licensee SFUSD should be rejected. GGPR has demonstrated its disregard for the Commission's own rules, for recognized pleading standards, for the rules of evidence, and for appropriate standards of behavior. Having failed to coerce SFUSD into handing its station over, GGPR has now also failed to make any case against SFUSD on the merits. By each of these tactics, GGPR has demonstrated its lack of entitlement to any consideration of its allegations. SFUSD respectfully requests that the Commission dismiss GGPR's pleading and, having found SFUSD in full compliance with the provisions of sections (a) and (k) of 47 U.S.C § 309, grant an unconditional renewal of its license for educational noncommercial radio station KALW(FM).

Dated: January 20, 1998

Respectfully submitted,

SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Licensee of KALW(FM), San Francisco, CA.

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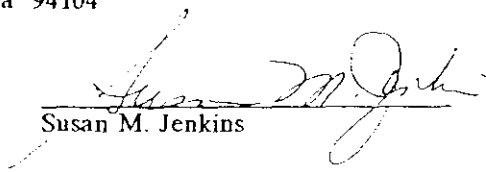
CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of January, 1998, I served a true copy of the above Opposition to Petition to Deny upon the following persons by first-class mail by placing a copy in the United States mail, postage prepaid, addressed as follows:

Mr. Jason Lopez
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Susan M. Jenkins

DECLARATIONS AND EXHIBITS

DECLARATION OF JEFFREY RAMIREZ

I, Jeffrey Ramirez, General Manager of KALW(FM), do hereby declare and state to the best of my knowledge and belief:

1. I have read the San Francisco Unified School District's Opposition to the Petition to Deny that was filed by Golden Gate Public Radio on October 31, 1997. It is my understanding that the SFUSD Opposition is to be filed on January 20, 1998. I have personal knowledge of the matters alleged therein.

2. The statements and factual allegations contained in the SFUSD Opposition to Petition to Deny and exhibits attached thereto are true and correct to the best of my personal knowledge and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19 th day of January 1998.


Jeffrey Ramirez

DECLARATION OF ENRIQUE E. PALACIOS

I, Enrique E. Palacios, Special Assistant to the Superintendent of Schools, San Francisco Unified School District, do hereby declare and state to the best of my knowledge and belief:

1. I have read the San Francisco Unified School District's Opposition to the Petition to Deny that was filed by Golden Gate Public Radio on October 31, 1997. It is my understanding that the SFUSD Opposition is to be filed on January 20, 1998. I have personal knowledge of the matters alleged therein.

2. The statements and factual allegations contained in the SFUSD Opposition to Petition to Deny and exhibits attached thereto are true and correct to the best of my personal knowledge.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19 th day of January 1998.


Enrique E. Palacios

DECLARATION OF JEFFREY RAMIREZ

I, Jeffrey Ramirez, under penalty of perjury, declare as follows:

1. My name is Jeffrey Ramirez. My address is 139 Marina Lakes Drive, Richmond, CA 94804. I make this Declaration based upon my own personal knowledge.

2. I am employed as General Manager for KALW(FM) radio in San Francisco, California, a public radio station owned by and licensed to the San Francisco Unified School District ("SFUSD" or "Board of Education"). I have held this position since August 5, 1996. I report to Enrique E. Palacios, who is the Special Assistant to the Superintendent of Schools, SFUSD. Ultimate control over the station is vested in KALW's licensee, the San Francisco Unified School District Board of Education, seven of whose members are elected public officials of the City of San Francisco, and one of whose members, Waldemar Rojas, is the Superintendent of Schools.

3. During my tenure as General Manager of KALW, I have had conversations with and observed the behavior of a number of KALW employees and/or volunteers who have either signed the Petition to Deny Application for License Renewal of Radio Station KALW, San Francisco, CA. (File No. BRED-970801 YA) that was filed by an entity that styles itself Golden Gate Public Radio ("GGPR") or signed affidavits or statements that are attached as exhibits to that Petition. These individuals are Jason Lopez, Deirdre Kennedy, Michael Johnson, Dave Evans, Susan Hecht, Mel Baker, Joann Mar, Joseph Hughes, and Hedy Jacobowitz. Based upon my conversations with and observations of these individuals, I would describe them as "disgruntled" employees. As General Manager, I have attempted to run KALW in a business-like manner. Many of the dissident employees who are part of or are cooperating with GGPR have indicated their preference for a more participatory and commune-like management style. I am also informed and believe that they are dissatisfied with station management, disagree with program and format changes I have instituted, and also disagree with the way that the civil service system has implemented by station management and by the School District.

4. Attached as Exhibit 1 to this Declaration is a copy of an article in the January 2, 1998 *San Francisco Chronicle* which appears to indicate that one or more KALW employees have gone to the press with their complaints about program/format changes and job dissatisfactions. I am informed and believe that the background of GGPR's Petition arose when certain of these employees attempted to persuade members of the Board of Education to transfer KALW to GGPR and, having failed in that effort, have filed this Petition in retaliation, as they had threatened to do if the station was not transferred to them. A hostile atmosphere has developed among certain staff members

and has also been manifested in communications received from some listeners. This hostility apparently stems, at least in part, to opposition to the format/program changes. For example, I received a threatening letter (a copy of which is attached to this Declaration, along with its envelope, as Exhibit 2) in the mail on December 19 or 20, 1997, within the same week after I cancelled the Jazz programming that had a small but vocal audience. Although I do not know the identity of the anonymous person who sent this letter, I attribute it to the atmosphere of public and/or staff hostility to this programming change and believe it provides an indication of the volatile nature of the atmosphere that has surrounded KALW in the past few months.

5. Jason Lopez and Deirdre Kennedy, each of whom signed the Petition to Deny as Directors of GGPR, are temporary employees of SFUSD. I am informed and believe that Dave Evans (Exhibit C affidavit) and Mel Baker (Exhibit F statement) are also members or directors of GGPR and that Mr. Evans is a "founder" of GGPR. See Exhibit 3 to this Declaration. Mr. Lopez and Ms. Kennedy are employed as Provisional or temporary employees in the civil services category of Announcer/Operator; they provide on-air services for KALW on an as-needed basis, as hourly employees, and work an average of 12 hours per month. I believe that Mr. Lopez may be disgruntled because I did not act on a new program idea which he proposed for KALW. On or about mid-May, 1997, he confronted me and demanded that the proposal be returned to him. With respect to Ms. Kennedy, she presently holds part-time jobs with this station and with KQED(FM), another public radio station in San Francisco. I am informed and believe that she may attempting to use GGPR as a means of career advancement and protection.

6. I have reviewed a copy of a three-page document bearing the notation "Exhibit S" that was filed as an exhibit attached to the aforesaid Petition. I affirm that Exhibit S appears to be a copy of a printout of a series of private electronic mail ("e-mail") messages between Mr. Michael Moon and myself that took place on July 30, 1997. On that date, I received an e-mail message from Mr. Moon. On or about that same date, I transmitted an e-mail message in response to Mr. Moon at his e-mail address moon@the.group.net. I utilized my personal password when accessing, composing, and transmitting these messages. I expected both these messages to be conducted in privacy and to remain private between Mr. Moon and me. I did not authorize any of the following persons: Jason Lopez, Deirdre Kennedy, Michael Johnson, Dave Evans, Susan Hecht, Mel Baker, Joann Mar, Joseph Hughes, or Hedy Jacobson, or any other person to intercept, read, print out, or otherwise have any access to these messages at any time. I did not myself print out a hard copy of these messages and I have not provided any hard copy of these messages to any of the above-listed persons, or any other person. I utilized my personal computer terminal located in my office at KALW for purposes of sending and receiving this e-mail. The only way anyone could have obtained these messages is by accessing them through the KALW computer system using my private password. I have never revealed my password to any of the above-listed persons and none of those persons is authorized to know my password. I do not know how anyone

associated with GGPR could have obtained access to my e-mail except by having illicitly discovered my password and accessing the e-mail message in an unauthorized manner. I consider this a violation of my expectation of privacy regarding these e-mail messages and have reported this violation to counsel for SFUSD.

7. Certain other documents that were filed as exhibits to the aforementioned Petition to Deny appear to be copies of documents that are the property of KALW and the SFUSD. Such documents are, in the ordinary course of business, kept in the non-public files of KALW. The documents in question include a 4-page list, labelled "Exhibit E", which is headed "License Renewals Materials -- In Files at Present"; a one-page unsigned draft form letter prepared for the signature of Enrique E. Palacios, Special Assistant to the Superintendent, addressed to "Dear Applicant", labelled "Exhibit K"; a one-page document headed "Notice to Provisional Employee", which is labelled "Exhibit M"; a one-page document headed "Separation Report", which is labelled "Exhibit N"; a seven-page document headed "Agreement between San Francisco Unified School District and Lynne Nerenbaum", which is labelled "Exhibit W"; and a two-page document headed "Board Resolution Request Form", which is labelled "Exhibit AA." None of the persons who are listed by name in paragraph 2 of this Declaration was or is authorized to have access to or to make or have copies of any of these referenced documents. Exhibit E was prepared by Susan Hecht at my direction and was thereafter, in the ordinary course of business, placed in, and must have been removed from, my files. Exhibit K would, in the ordinary course of business, have been located in the files or on the computer hard disk of an assistant to Enrique E. Palacios, Special Assistant. If it was removed from either place, it was without authorization to do so. Exhibit M would, in the ordinary course of business, be located in, and must have been removed from, the confidential personnel file for Ana Perez. Exhibit N would ordinarily be located in, and must have been removed from, the confidential personnel file for William Helgeson. Exhibits W and AA would have ordinarily been located in, and must have been removed from, the business files maintained by Mr. Helgeson.

8. With respect to Exhibit B (Affidavit of Michael Johnson), I deny ever having said to Michael Johnson that "the Youth Program Manager hire was not done properly." I have no idea what he means by this allegation or by his allegation that I gave him a "vague answer" in response to his question.

9. With respect to Exhibit C (Affidavit of Dave Evans), I have only a vague and general recollection having a meeting with Dave Evans at some time in August 1996 with respect to the public inspection file. This meeting occurred during my first few weeks as General Manager for KALW and I was still in the process of orienting myself to the station and its needs. I subsequently forgot that the conversation had occurred, but now recall it. I do recall that Mr. Evans was rather confrontational during this conversation and refused to be specific as to how the public file might be deficient and that the entire conversation was confusing to me. I nevertheless attempted to follow up on this conversation by seeking to determine what was in the files already and what

needed to be added to make them complete and in conformity with the Commission's requirements. Review and updating of the file has been and is an ongoing process. I am sure he did not tell me that KALW's EEO program was "out of date."

10. With respect to Exhibit D (affidavit of Susan Hecht), I recall that, in June 1997, as a part of this file review and update process, I assigned Ms. Hecht the task of reviewing the file. I do not consider the list she produced, which is attached to the Petition to Deny as Exhibit E, to be accurate and, in fact, it appears that she may have misunderstood my directions when she worked on this assignment. I made no further use of that list. With respect to Exhibit F (statement of Mel Baker), I do not understand the relevance of the allegations made by Mr. Baker (who is employed as a temporary Announcer/Operator for approximately 12 hours per month) concerning either personnel policies or contracts or other records for fund drive coordinators. It is and has been my understanding that the Commission does not equate civil service rules with the existence of a viable EEO program and, further, that the Commission's rules do not require all such contracts to be in the public files. Exhibits T, U, V, and Z are contracts which, in fact, are maintained in the public inspection file of KALW in accordance with my understanding of the requirements of Rule 73.3527 of the Commission's Rules.

11. As part of my responsibilities as General Manager, I gathered the information required to respond to and report information on KALW's application for license renewal and filled in the application form that was filed with the Commission on July 30, 1997. This was the first time in my career that I had filled in one of these forms. My understanding of what information was required to be provided and certified was not complete and I believe I may have misunderstood what was required in completing Section III, questions 1, 2, and 3. For example, I believed at the time I responded "Yes" to Questions III. 1.(a) and (b), these only referred to KALW's having filed with the Commission, respectively, a current Annual Employment Report and a current Annual Ownership Report. Since such Reports were to be attached to and filed with the license renewal application, I believed that "Yes" was the appropriate response.

12. With respect to the response to Question III.2, I had conferred with communications counsel regarding what was required to be in the public files and with respect to response to this question. I relied upon my understanding of the advice of counsel, the counsel memorandum on this subject published by the National Association of Broadcasters, and my knowledge of the files maintained by KALW, in responding "Yes" to this question. At the time I made that response, I believed that Ms. Hecht's assessment of the public inspection file was inaccurate and confused and I did not recall any prior conversation I may have had with Mr. Evans on this subject. I also believed that I had fully accounted for all public issues/programs during my tenure as General Manager in the document which Petitioner has labelled Exhibit O, which is what I believed was called for by the question and the rule. Therefore, I believed I was